IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16728 of 2003
with
CIVIL APPLICATION NO.2628 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAYADEVI MOHANLAL

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 16728 of 2003
PARTY-IN-PERSON for Petitioner No. 1
Mr.Mengdey, Asst.GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 1
MR KV GADHIA for Respondent No. 2
SERVED BY AFFIX.-(R) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 13/04/2004

ORAL JUDGEMENT

The present petition is preferred by the petitioner for appropriate direction to the respondent authority for recovery of amount as per recovery certificate issued by the labour court.

2. Initially Mr.Gade was appearing for the petitioenr as advocate and thereafter he has retired and party in person Mayadevi Mohanlal is present and has submitted written arguments. I have considered the aguments and I have also heard Mr.Mengey, Ld.AGP for respondent No.1 and Mr.K.V.Gadhia for respondent No.2.

3. Upon hearing the party in person as well as Mr.Mengdey, Ld.AGP for respondent No.1 and Mr.Gadhia for respondent No.2 it appears that there is no dispute on the point that the award passed by the labour court is confirmed by this court (Coram:D.H.Waghela,J) in SCA No.3835/00 as per order, dated 18.12.2001 and the said decision of the learned Single Judge was carried in proceedings of LPA(St)No.468/02 with CA No.5392/02 and as per the decision of the Division Bench of this court (B.J.Shethna & A.L.Dave,JJ), dated 5.5.03 the delay is not condoned and the LPA is dismissed as time barred. Hence, there is no prohibitory order passed by any authority staying the execution and implementation of the award and therefore it would be required on the part of the Dist.Collector or the officer authorised by him for recovery of the amount as per recovery certificate.

4. However, Mr.Gadhia appearing for respondent No.2 submitted that an application for review of the order passed by the labour court is preferred by the respondent No.2 before the labour court and the said matter is pending and therefore he submitted that the matter may be considered accordingly. Primafacie, it is doubtful as to whether such application can be maintained once the award is confirmed by the decision of this court. The respondent No.2 may have remedy as available under law but as on today the award passed by the labour court operates and as a consequence thereof recovery certificate issued by the labour court deserves to be executed.

5. Mr.Mengdey, Ld.AGP submitted that the Collector or the officer authorised by the Collector shall take necessary steps and shall complete the recovery of amounts per the recovery certificate as early as possible, preferably within a period of four months from the date of receipt of writ of this court.

6. The party in person has prayed that the amount of Rs.40,000/- which is deposited by respondent No.2 with this court pursuant to order, dated 29.1.2004 passed by this court may be allowed to be withdrawn by her since the award is in operation and so is the case for recovery certificate. Mr.Gadhia has not been able to show any ground not to permit the petitioner to withdraw the amount of Rs.40,000/- which is deposited with this court towards the amount to be recovered as per recovery certificate issued by labour court.

Mr.Gadhia submitted that Rs.10,000/- is earlier paid by the respondent No.2 to the petitioner in cash and the party in person admits that she has received Rs.10,000/- from respondent No.2. Therefore, as Rs.10,000/- + Rs.40,000/- is already recovered the respondent No.1 would be required to recover the balance amount of the recovery certificate.

7. Under the circumstances, in my view the following directions would meet with the ends of justice:

(i) The petitioner shall be allowed to withdraw Rs.40,000/-by the office which is deposited by the respondent No.2 by account payee cheque in her favour.

(ii) The respondent No.1 shall take necessary steps for recovery of amount as per recovery certificate issued by the labour court minus Rs.50,000/- which is already recovered and shall complete the recovery of amount as early as possible, preferably within four months from the date of receipt of writ of this court.

8. Petition is is disposed of in terms of aforesaid directions. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

9. In view of the order passed main SCA No.16728/03 the CA No.2628/04 would not survive and hence stands disposed of accordingly.

13.4.04 (JAYANT PATEL,J)